

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ISAAC SCOTT CASTANEDA,

Petitioner,

v.

THERESA CISNEROS,<sup>1</sup>

Respondent.

Case No. 1:20-cv-00377-NONE-HBK

ORDER DIRECTING RESPONDENT TO  
PROVIDE STATE COURT RECORD

ORDER DIRECTING RESPONDENT TO  
SUBMIT ADDITIONAL BRIEFING

TWENTY-ONE DAY DEADLINE

ORDER DIRECTING CLERK OF COURT TO  
SUBSTITUTE RESPONDENT

Petitioner Isaac Scott Castaneda (“Petitioner” or “Castaneda”) is proceeding *pro se* on his petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254 on March 2, 2020.<sup>2</sup> (Doc. No. 1). Respondent moved to dismiss the petition. (Doc. No. 24). Petitioner has not filed an

<sup>1</sup> Respondent moves to substitute Theresa Cisneros, the current warden of California Substance Abuse and Treatment Facility, as the Respondent in this case. The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is “the person who has custody over [the petitioner].” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242); *see also* § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained”). Accordingly, the Court will direct the Clerk of Court to substitute Theresa Cisneros as the Respondent in this case.

<sup>2</sup> The Court applies the “prison mailbox rule” to *pro se* prisoner petitions, deeming the petition filed on the date the prisoner delivers it to prison authorities for forwarding to the clerk of court. *See Saffold v. Newland*, 250 F.3d 1262, 1265, 1268 (9th Cir.2000), *overruled on other grounds*, *Carey v. Saffold*, 536 U.S. 214 (2002).

1 opposition and the time for doing so has passed. For the reasons stated below, the Court defers its  
2 ruling on Respondent's motion to dismiss in order to permit Respondent to submit supplemental  
3 briefing and the state court record.

## 4 **I. BACKGROUND AND APPLICABLE LAW**

5 Petitioner is serving a state prison sentence for his conviction of, *inter alia*, attempted  
6 murder and possession of a firearm by a felon entered by the Kings County Superior Court, case  
7 no. 12CM1522HTA on February 13, 2014.<sup>3</sup> (Doc. No. 1 at 1). Petitioner's sentence was  
8 enhanced by findings of gang membership and gun possession. (*Id.*). Petitioner was sentenced to  
9 forty-five years to life for the attempted murder conviction, twenty-five years to life on the  
10 sentencing enhancements, and a stayed six-year term on the possession of a firearm conviction.  
11 (Doc. No. 24 at 1-2). Petitioner makes the following claims for relief: (1) newly discovered  
12 evidence proves he is innocent of his crimes of conviction; (2) the state court erred when it  
13 declined to hold a hearing on the newly discovered evidence; and (3) errors made by the  
14 prosecution and defense violated his constitutional rights. (Doc. No. 1 at 4-9).

15 Along with his petition, Petitioner moved to stay the case pending exhaustion of his  
16 claims before the state courts. (Doc. No. 2). The Court denied Petitioner's motion to stay. (Doc.  
17 Nos. 14, 15). On January 22, 2021, the Court ordered Respondent to respond to the petition (Doc.  
18 No. 20) and Respondent moved to dismiss the petition. (Doc. No. 24). Respondents argue that  
19 the petition was filed over twenty-one months after the expiration of AEDPA's statute of  
20 limitations and that the actual innocence exception to the statute of limitations should not apply to  
21 the petition. (*See generally id.*).

## 22 **II. APPLICABLE LAW AND ANALYSIS**

23 Respondent contends that Petitioner filed his federal habeas petition over 21 months after  
24 the expiration of AEDPA's limitations period under 28 U.S.C. § 2244(d)(1)(A),<sup>4</sup> that he is not

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25 <sup>3</sup> Although Petitioner did not provide his date of conviction in his petition, the Court takes judicial notice  
26 Petitioner's date of conviction on the Kings County Superior Court online case database under Federal  
27 Rule of Evidence 201. *See* <https://cakingsportal.tylerhost.net/CAKINGSPROD/Home/Dashboard/29>, last  
28 accessed October 12, 2021.

<sup>4</sup> Under 28 U.S.C. § 2244(d)(1)(A), AEDPA's one-year limitation period runs from "the date on which the  
judgment became final by the conclusion of direct review or the expiration of the time for seeking such

1 eligible for the “actual innocence gateway,” and that he is not entitled to a later start date of the  
 2 statute of limitations under 28 U.S.C. § 2244(d)(1)(D).<sup>5</sup> (*See generally* Doc. No. 24). Although  
 3 Petitioner did not respond to Respondent’s motion to dismiss, Petitioner argues in his earlier  
 4 briefing that he should be entitled to gap tolling for the periods during which he was seeking state  
 5 habeas review, thereby making his federal petition timely under 28 U.S.C. § 2244(d)(1)(A).  
 6 (Doc. No. 10 at 2). Elsewhere in the briefing, Petitioner seeks equitable tolling due to the  
 7 ineffectiveness of his trial and appellate counsel, arguing that he did not discover the factual  
 8 predicate of his ineffective assistance of counsel claims until roughly October 2020, when he  
 9 came into contact with a jailhouse lawyer. (*See generally* Doc. No. 19 at 1-12). In the  
 10 alternative, Petitioner argues that he should be afforded equitable tolling of the statute of  
 11 limitations under the narrow actual innocence gateway described in *Schlup v. Delo*, 513 U.S. 298  
 12 (1995) and *McQuiggin v. Perkins*, 569 U.S. 383 (2013).

13 Upon a cursory review of Petitioner’s timeliness arguments, it does not appear that  
 14 statutory gap tolling will make the petition timely. Further, it does not appear that Petitioner’s  
 15 claim of attorney error will afford him equitable tolling. However, in light of the discussion *infra*,  
 16 the Court reserves to make findings and recommendations regarding the timeliness of the petition  
 17 under statutory tolling or equitable tolling based on attorney error until the record can be more  
 18 fully developed as to Petitioner’s request for equitable tolling under the actual innocence  
 19 gateway.

#### 20 **A. Actual Innocence Gateway**

21 Petitioner argues that he is innocent of his crime of conviction. (Doc. No. 1 at 4-7). In  
 22 support of his claim, Petitioner presents his own declaration and eight other affidavits. (*Id.* at 12-  
 23 36). Four of these affidavits state that Petitioner was at a bar-be-que on the day of the shooting.  
 24 The remaining affidavits state that the victim told Petitioner’s sister and various acquaintances  
 25 that he was unsure whether Petitioner was the shooter.

26 \_\_\_\_\_  
 review.”

27 <sup>5</sup> The one-year limitation period commences under 28 U.S.C. § 2244(d)(1)(D), on the “date when the  
 28 factual predicate of the claim or claims presented could have been discovered through the exercise of due  
 diligence.”

1 In *McQuiggin*, 569 U.S. at 383, the U.S. Supreme Court held that a federal habeas  
2 petitioner may be excused from meeting AEDPA's statute of limitations upon a showing of  
3 "actual innocence." See also *Lee v. Lampert*, 653 F.3d 929, 932 (9th Cir. 2011) (en banc). Under  
4 the "actual innocence gateway" of *Schlup*, a petitioner's procedurally barred claim may be  
5 considered on the merits if his claim of actual innocence is sufficient to implicate a fundamental  
6 miscarriage of justice. *Majoy v. Roe*, 296 F.3d 770, 775-76 (9th Cir. 2002); *Carriger v.*  
7 *Stewart*, 132 F.3d 463, 477 (9th Cir.1997) (en banc). If Castaneda presents "evidence of  
8 innocence so strong that a court cannot have confidence in the outcome of the trial unless the  
9 court is also satisfied that the trial was free of nonharmless constitutional error, the petitioner  
10 should be allowed to pass through the gateway and argue the merits of his underlying claims."  
11 *Schlup*, 513 U.S. at 316.

12 "[A] petitioner does not meet the [actual innocence] threshold requirement unless he  
13 persuades the district court that, in light of the new evidence, no juror, acting reasonably, would  
14 have voted to find him guilty beyond a reasonable doubt." *Id.* at 329. "[H]abeas corpus petitions  
15 that advance a substantial claim of actual innocence are extremely rare." *Id.* at 321. However,  
16 "[a] petitioner need not show that he is 'actually innocent' of the crime he was convicted of  
17 committing; instead, he must show that 'a court cannot have confidence in the outcome of the  
18 trial.'" *Majoy*, 296 F.3d at 776 (quoting *Schlup*, 513 U.S. at 316 and *Carriger*, 132 F.3d at 478).

19 Further, the federal habeas court "must consider all the evidence, old and new,  
20 incriminating and exculpatory, without regard to whether it would necessarily be admitted under  
21 rules of admissibility that would govern at trial." *House v. Bell*, 547 U.S. 518, 538  
22 (2006) (internal quotation marks and citation omitted). "Based on this total record, the court must  
23 make 'a probabilistic determination about what reasonable, properly instructed jurors would  
24 do.'" *Id.* (quoting *Schlup*, 513 U.S. at 329). This "new evidence" must only be newly presented,  
25 not newly available. *Griffin v. Johnson*, 350 F.3d 956, 963 (9th Cir. 2003) (finding that medical  
26 records made before the start of trial, but not presented at trial, were "new evidence" in support of  
27 petitioner's actual innocence claim).

28 Here, the Court does not have the benefit of reviewing the entire state record below.

1 Based upon the record, it the Court cannot consider “all the evidence, old and new” in  
2 determining whether the testimony contained in the declarations submitted by Petitioner would  
3 have persuaded the jury to a different result. Therefore, the Court will direct Respondent to lodge  
4 the pertinent state court record in this case, including all trial transcripts and any other relevant  
5 trial record.

6 Further, the Respondent has failed to brief the Court’s standard of review—whether no  
7 juror, acting reasonably, would have voted to find Petitioner guilty beyond a reasonable doubt in  
8 light of the evidence presented at trial and Petitioner’s newly presented evidence. Rather,  
9 Respondent attacks the credibility of the declarants and the reliability of the declarations, arguing  
10 that the Court should discredit them. Respondent is directed to submit supplemental briefing  
11 which considers both the old and new evidence in this case under binding caselaw.

12 Accordingly, it is ORDERED:

13 1. Within twenty-one (21) days from the date of this order, Respondent shall lodge the  
14 pertinent state court record with the Court; and

15 2. Within twenty-one (21) days from the date of this order, Respondent shall submit  
16 supplemental briefing in accordance with this order.

17 3. Petitioner may file a reply, if any, to Respondent’s supplemental briefing no later than  
18 fourteen (14) days after receipt of Respondent’s supplemental briefing.

19 4. The Clerk of Court is directed to substitute Theresa Cisneros as the Respondent in this  
20 matter.

21 Dated: October 13, 2021

22   
23 HELENA M. BARCH-KUCHTA  
24 UNITED STATES MAGISTRATE JUDGE  
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